IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 679 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
THAKOR TULSIBHAI MAVABHAI - Opponent(s)

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Appearance :
MR SP HASURKAR APP for Appellant(s) : 1,
NOTICE SERVED for Opponent(s) : 1,
MR SHAKEEL A QURESHI for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 01/10/2007

ORAL JUDGMENT

1.0 This appeal is directed against the judgment and order dated 12.04.1996 passed by the learned Judicial Magistrate, First Class, Radhanpur in Criminal Case No. 168 of 1989 whereby, the respondent – accused person was acquitted of the alleged

offences punishable u/s. 326 & 447 of the Indian Penal Code.

2.0 The brief facts of the prosecution case are as under;

2.1 On 27.12.1988, at around 1600 hrs., the respondent went to the place of employment of the complainant and inflicted a '*dharia*' blow on him as he suspected that the complainant was having some illicit relationship with his wife. Thereafter, the respondent fled from the scene of offence and the other staff members of the factory took the complainant to a nearby Hospital for necessary medical treatment. A complaint for offences punishable u/s. 326 & 447 of the IPC was filed against the respondent.

2.2 On completion of investigation, charge-sheet was filed against the respondent before the Court of learned J.M.F.C., Radhanpur and trial was conducted. At the end of trial, the learned Magistrate acquitted the respondent of the offences alleged against him. Being aggrieved by the said judgment and order passed by the trial Court, the appellant – State has approached this Court by way of this appeal.

3.0 Heard learned counsel for the appellant and perused the entire documents on record. None appears on behalf of the respondent. The principles which would govern and regulate the hearing of appeal by this Court against an order of acquittal passed by the trial Court have been very succinctly explained by the Apex Court in a catena of decisions. This Court has the power to re-

consider the whole issue involved in the appeal, re-appraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial Court, if the said findings are against the weight of the evidence on record or, in other words, perverse. Even in a recent decision of the Apex Court in the case of ***State of Goa v. Sanjay Thakran & anr. reported in (2007) 3 S.C.C. 755***, the Court has reiterated similar principle. In Para-16 of the said decision, the Court has observed as under ;

> "16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to find out whether any of the accused is connected with the commission of the crime he is charged with".
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> [*Emphasis supplied*]

4.0 The trial Court has not believed the story put forward by the complainant. The incident in question took place in broad day-

light and it is highly unbelievable that no one would have even attempted to catch hold of the respondent after the respondent had inflicted the alleged blow on the complainant. The prosecution case has not got any support from the evidence led by any of its witnesses. Instead there are contradictions in their depositions which lead us to believe that their evidence is untrue and unreliable.

5.0 Considering the facts and circumstances of the case and the evidence discussed hereinabove, I am of the opinion that the trial Court was completely justified in acquitting the respondent of the offences alleged against him. In my view, the findings recorded by the trial Court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. I am in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the trial Court and, hence, find no reasons to interfere with the same. I am not discussing the evidence of each witness in detail in view of the observations made by the Apex Court in the case of ***State of Karnataka Vs. Hemareddy*** reported in ***A.I.R. 1981 S.C. 1417*** wherein it is held as under:

> "... This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudhary (1967)1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons

> given by the Court the decision of which is under appeal, will ordinarily suffice."

6.0 In the result, the appeal is dismissed. Office is directed to send the Records & Proceedings of the case, if lying with this Court, to the trial Court concerned forthwith.

[K. S. Jhaveri, J.]

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